

CHAPTER 1 PUBLIC SERVICE COMMISSION RULES OF PRACTICE AND PROCEDURE

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100 DOCKETS AND FILINGS

- 100.1 Two (2) dockets, a General Docket and a Formal Docket, shall be maintained in the office of the Commission.

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- 100.2 The General Docket shall be kept on cards, and in it shall be entered every matter requiring the attention of the Commission.
- 100.3 The Formal Docket shall be kept in permanently bound books, and every matter requiring formal action by the Commission shall be transferred to it from the General Docket.
- 100.4 Both dockets shall be public records available for public inspection in the office of the Commission during normal office hours, subject to reasonable limitations of access and extraordinary circumstances when inspection would interfere with the normal operation of the office.
- 100.5 All documents to be filed with the Commission shall be received at the Office of the Commission Secretary.
- 100.6 The office of the Commission shall be open each business day except Saturdays, Sundays and legal holidays, from 8:00 a.m. to 4:30 p.m.
- 100.7 All pleadings and other filings shall comply with the requirements of Chapters 1 and 2 of this title and shall be considered filed when received by the Commission during the business hours of the Commission as set forth in this section.
- 100.8 All filings shall be made between the hours of 8:00 a.m. and 4:00 p.m. on or before the date due. No documents shall be received for filing after that time or due date unless otherwise ordered by the Commission or its authorized representative.
- 100.9 Receipt of a filing by the Commission shall not constitute a waiver or any failure to comply with the requirements of Chapters 1 and 2 of this title.
- 100.10 The Commission may, at any time, reject all or any part of a filing that does not conform to the requirements of Chapters 1 and 2 of this title.
- 100.11 Unless otherwise required by the Commission, there shall be filed with the Commission an original and twenty-five (25) conformed copies of all documents submitted to the Commission for filing; however, for non-base rate proceedings the appropriate number of copies to be filed is an original and fifteen (15) conformed copies of all documents.

AUTHORITY: Unless otherwise noted, the authority for this chapter is Paragraph 97(b) of §8 of An Act Making appropriations to provide for the expenses of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 977); as amended by §2 of the Public Utilities Amendment Act of 1989, D.C. Law 8-47, D.C. Code 43-501 (1990 Repl. Vol.).

SOURCE: Final Rulemaking published at 28 DCR 2984, 2986 (July 3, 1981); as amended by Final Rulemaking published at 29 DCR 2719 (June 25, 1982); by Final Rulemaking published at 29 DCR 4906 (November 5, 1982); by Final Rulemaking published at 36 DCR 4781 (July 7, 1989); by Final Rulemaking published at 39 DCR 5117, 5118 (July 10, 1992); and by Final Rulemaking published at 42 DCR 2340 (May 12, 1995).

101 COMMENCEMENT OF PROCEEDINGS

- 101.1 A formal or informal complaint, petition or application, may be filed by any person as defined in this chapter.

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- 101.2 The Commission, on its own motion or on the petition of any person, at any time, may order a formal investigation or issue an order to show cause.
- 101.3 Orders initiating an investigation or to show cause shall indicate the nature of the matters to be investigated, and shall be served upon the person who is the subject of the order.
- 101.4 The Commission may investigate at any time any matter germane to its jurisdiction.
- 101.5 No fees shall be charged for the commencement of any proceeding or the filing of any pleading or other papers.
- 101.6 Within ten (10) days of the commencement of a proceeding, or the commencement of a proceeding by the Commission on its own motion, any interested party shall file a statement indicating whether the new proceeding should be considered a "rate case" or an "other investigation" for the purposes of D.C. Code §43-612 (1981 Ed.), and the factual and legal bases for the assertion. Any responsive comments shall be filed within twenty (20) days of the commencement of the proceeding.
- 101.7 For purposes of §101.6, a proceeding shall be deemed to be commenced upon the occurrence of any of the following events:
- (a) An initial petition, application or formal complaint is filed;
 - (b) A notice of proposed rulemaking is published in the *District of Columbia Register*;
 - (c) A public notice is published in the *District of Columbia Register*;
 - (d) A notice of prehearing conference is published in the *District of Columbia Register*; or
 - (e) An order and report on the prehearing conference designating issues and establishing a procedural schedule is issued by the Commission.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2987 (July 3, 1981); as amended by Final Rulemaking published at 36 DCR 7291 (October 20, 1989).

102 [RESERVED]

103 INFORMAL COMPLAINTS AND HEARINGS

- 103.1 Each informal complaint, including complaints under Chapter 3 of this title, shall initially be referred to the Commission's Office of the General Counsel for investigation, unless otherwise directed by the Commission.
- 103.2 Upon conclusion of an investigation, the Staff shall file its written findings and recommendations with the Commission.
- 103.3 Upon review of the Staff's findings and recommendations, the Commission may either attempt to resolve the matter informally or transfer it to the Formal Docket.
- 103.4 When an informal complaint is docketed as a formal complaint, the Commission shall issue an Order setting forth the issues and procedural schedule.
- 103.5 If a formal pleading in the nature of a complaint, including formal complaints pursuant to the Consumer Bill of Rights, is of a nature conducive to informal resolution, the Commission may refer the matter for informal resolution under this section unless the complaint specifically alleges that the matter has previously been brought to the attention of the General Counsel Staff.
- 103.6 The Commission may, from time-to-time, order informal hearings to obtain information necessary or helpful in the determination of its policies, the carrying out of its duties, the formulation or amendment of rules and regulations, or the disposition of informal complaints.
- 103.7 Informal hearings may be public or non-public as the Commission may direct, and the procedure may be informal to any extent which the Commission may deem appropriate and expedient.
- 103.8 The Commission may require the attendance of witnesses and the production of evidence as in a formal hearing.
- 103.9 Informal complaints shall be in writing and may conform to the other requirements for formal pleadings.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2988 (July 3, 1981); as amended by Final Rulemaking published at 39 DCR 5117, 5118 (July 10, 1992).

104 INITIAL PLEADINGS

- 104.1 Each initial petition, application, or formal complaint shall contain the following information:
- (a) The name and address of petitioner, applicant, or complainant;
 - (b) A clear and concise statement of facts upon which the petition, application, or complaint is based and the position and interest of the petitioner, applicant, or complainant in the matter;

- (c) A reference to the specific section or sections of the statute, rule, regulation, or order of the Commission upon which relief is sought;
 - (d) A request for a particular order, authorization, permission, certificate, or relief;
 - (e) Verification and signature of petitioner, applicant, or complainant;
 - (f) The signatory's address and telephone number; and
 - (g) A statement indicating whether the proceeding sought should be considered a "rate case" or an "other investigation" for the purposes of D.C. Code §43-612 (1981 Ed.), and the factual and legal bases for the assertion; Provided, that comments on a petitioner's statement required by this paragraph shall be filed by any interested party within ten (10) days of the initial filing, and any responsive comments shall be submitted within twenty (20) days of the initial filing.
- 104.2 Joint complaints shall be allowed if they involve the same issues and the same or similar facts. Joint complaints shall be subject to all rules relating to complaints.
- 104.3 Each document initiating new proceedings shall leave a space for the docket number. Each subsequent document for filing shall show on the first page the caption for each proceeding, the docket number, the title of the document, and leave sufficient space in the upper right hand corner for a time and date stamp.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2989 (July 3, 1981); as amended by Final Rulemaking published at 36 DCR 7291, 7292 (October 20, 1989).

105 ANSWERS, CROSS-COMPLAINTS AND MOTIONS

- 105.1 Any party upon whom a copy of a petition, formal complaint, cross complaint, order or investigation, or order to show cause has been served shall answer and file the same with the Commission within ten (10) days after service of that complaint, petition, or order, or within such time as extended by the Commission, or within a lesser time fixed by the Commission for good reason stated.
- 105.2 Any party specified by §105.1 who fails to answer a service within the period prescribed shall be deemed in default, except where the Commission shall waive the answer.
- 105.3 In the event the Commission shall waive the answer as to any party, the case shall be deemed at issue as to that party.
- 105.4 Joint answers to the same complaint shall be allowed.
- 105.5 The purpose of the answer is to fully advise the complainant and the Commission of the nature of the defense.

- 105.6 The answer shall admit or deny each material allegation in the complaint and shall set forth any new matter constituting a defense. It shall also set forth any defects in the complaint which require amendment or clarification.
- 105.7 Cross complaints, if any, shall be filed by the respondent with the answer to the complaint. Cross complaints shall be subject to all rules relating to complaints.
- 105.8 Written motions may be filed at any time in accordance with this chapter. Responses to a written motion shall be filed no later than ten (10) calendar days after a motion has been served.
- 105.9 No rejoinders or replies to responses shall be accepted without leave of the Commission.
- 105.10 The Commission may act without awaiting responses, when considered necessary.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2989 (July 3, 1981).

106 INTERVENTION

- 106.1 Any person as defined by this chapter, not named as a party in the pleadings initiating a proceeding but having a substantial interest therein, may petition the Commission for leave to intervene.
- 106.2 Petitions for leave to intervene shall set forth the grounds of the proposed intervention and the position and interest of the petitioners in the proceeding.
- 106.3 A petition for leave to intervene shall be in writing and shall be filed by the prospective intervenor in compliance with the direction set forth in the public notice of the filing or application, or as may be otherwise ordered by the Commission.
- 106.4 Any party may answer a petition for leave to intervene. That answer, if filed, shall be subject to all of the rules relating to answers.
- 106.5 The Commission may grant or deny a petition for leave to intervene, or may grant the petition upon such conditions and limitations as it may prescribe.
- 106.6 A person whose petition for leave to intervene has been granted by the Commission shall be permitted to appear and participate as a party in the proceeding; Provided, that the granting of such petition shall not constitute a determination by the Commission that the intervenor is or will be affected by the final order or decision.
- 106.7 The granting of a petition to intervene shall not have the effect of changing or broadening the issues in the proceeding, except where that change or broadening is expressly requested by the intervenor and is expressly granted by the Commission after opportunity for the filing of objection to that request has been afforded to all parties.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2990 (July 3, 1981).

107 LIMITED APPEARANCE

- 107.1 At the discretion of the Commission, any person may make a limited appearance in any proceeding by presenting a statement orally or in writing at any time prior to the close of the record.
- 107.2 A person entering a limited appearance shall not be a party to the proceeding and shall not have the right to present testimony or cross-examine witnesses.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2991 (July 3, 1981).

108 EX PARTE COMMUNICATIONS

- 108.1 No interested person may, with respect to any case, make (or knowingly cause to be made) to any Commissioner, Hearing Agent, or personal assistant to the Commissioners, any *ex parte* communication while the proceeding is pending before the Commission.
- 108.2 The provisions of §108.1 do not apply to any of the following communications:
- (a) Those specifically authorized by law to be made on an *ex parte* basis;
 - (b) Those related to a matter of procedure; or
 - (c) Those made in the course of another proceeding of the Commission to which it primarily relates, and is on the public record.
- 108.3 Any employee of the Commission or person may apply to the Office of General Counsel for an advisory opinion as to whether any provision of this section is applicable to a communication.
- 108.4 A proceeding is considered pending before the Commission when it is noticed for hearing, or when a communicator who reasonably believes it will be noticed for hearing obtains such knowledge (but not before the proceeding is docketed).
- 108.5 A proceeding ends when the Commission's decision becomes final for purposes of judicial review.
- 108.6 If a proceeding is phased or segmented so that one or more parts of the proceeding constitute informal rulemaking and one or more parts constitute contested proceedings, the Commission may, by order, provide that each phase or segment shall constitute a separate proceeding for purposes of this rule.
- 108.7 Any Commissioner, personal assistant to a Commissioner, hearing agent or person appointed to advise the Commission, who receives an *ex parte* communication prohibited by this section shall, within forty-eight (48) hours after first having reason to believe that the communication is prohibited, prepare and deliver to the Secretary a written statement setting forth the substance of the communication if it is in oral form, or deliver to the Secretary the actual communication if it is in written form.

- 108.8 The Secretary shall place any statement or communication in public files associated with the proceeding, but separate from the record upon which the Commission will rely in reaching its decision. The Secretary shall mail to each person on the official service list of the proceeding a copy of any such statement or communication.
- 108.9 If the Commission determines that a communication was knowingly made (or caused to be made) by a party acting in violation of this section, the Commission may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, or otherwise adversely affected.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2990 (July 3, 1981); as amended by Final Rulemaking published at 29 DCR 97 (January 1, 1982); and by Final Rulemaking published at 39 DCR 5117, 5118 (July 10, 1992).

109 COMMISSION STAFF'S ROLE IN PROCEEDINGS

- 109.1 Unless otherwise provided by Chapter 1 or 2 of this title, any person or participant in any proceeding is encouraged to confer on an informal basis with the Staff of the Public Service Commission with respect to any matters within the Commission's authority to regulate.
- 109.2 No person, participant, or Staff personnel shall be bound by any statement made during the course of any informal consultations, and the Commission shall not be bound by statements or positions of Staff without its expressed consent.
- 109.3 Neither the Staff of the Commission nor any consultant hired by the Commission shall appear as a party to, advocate, or intervenor in any Commission proceeding.
- 109.4 Individual Staff members and consultants may comment or participate in any proceeding as expert witnesses only when directed to do so by the Commission. Individual Staff members and consultants may present testimony on selected issues after the Commission makes a finding of the issues to be decided in the proceeding and a determination that testimony in addition to that presented by the parties or intervenors is required by the Commission to develop a complete record. This provision shall apply to any tariff changes, investigations, financing or rulemakings, as well as base rate proceedings.
- 109.5 The appearance of individual Staff members and consultants shall be in accordance with Article VII of the Federal Rules of Evidence.
- 109.6 The Commission may appoint its General Counsel or the General Counsel's designee to assist the Staff members and consultants testifying pursuant to §109.4.
- 109.7 The General Counsel or the General Counsel's designee may cross-examine all witnesses, including those testifying pursuant to §109.4, in any proceeding before the Commission.

- 109.8 Testimony filed or presented pursuant to §109.4 shall reflect the witnesses' views on the issues. The statement of a view on an issue may include the following:
- (a) An analysis of how that view differs from the views of other witnesses in the proceeding;
 - (b) An analysis of prior Commission decisions; and
 - (c) An analysis of how such decisions relate to the views of the testifying witnesses and the other witnesses in the proceeding.
- 109.9 Staff members and consultants presenting testimony pursuant to §109.4 may file rebuttal testimony.
- 109.10 Neither prehearing nor post-hearing briefs shall be filed by Staff in any Commission proceeding, unless otherwise directed.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2993 (July 3, 1981); as amended by Final Rulemaking published at 33 DCR 891 (February 14, 1986); by Final Rulemaking published at 42 DCR 2340 (May 12, 1995); by Final Rulemaking published at 39 DCR 5117, 5118 (July 10, 1992); and by Final Rulemaking published at 43 DCR 29 (January 5, 1996), effective January 22, 1996.

110 APPEARANCES AND REPRESENTATION

- 110.1 In any proceeding an individual, receiver, trustee, or official may appear in his or her own behalf, a member of a partnership may represent the partnership, an officer of a corporation may represent the corporation, a member or employee or an association or non-profit corporation may represent the association or non-profit corporation, and an official of a Federal, District or State Commission or other governmental agency may represent that Commission or governmental agency.
- 110.2 Any individual appearing before or transacting business with the Commission in a representative capacity may be required to establish authority to act in that capacity.
- 110.3 A person may be represented in any proceedings before the Commission by an attorney at law admitted to practice before the District of Columbia Court of Appeals; or by an attorney admitted to practice before the highest court of any state upon the granting by the Commission of a motion for special appearance; Provided, that the attorney does not maintain an office within the District of Columbia for the practice of law.
- 110.4 In any proceeding before the Commission, if a party is represented by more than one attorney or person, that party shall, at the time it first appears before or files with the Commission, designate which one of those attorneys or persons is authorized to receive service on behalf of that party. Service to that designated representative shall be considered to be service to all representatives of that party as well as to that party.
- 110.5 The Commission may disqualify, or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way, to any individual who is found by the Commission, after hearing, either to be lacking in the requisite

qualifications to represent others or in character or integrity or to have engaged in unethical, improper or unprofessional conduct. In particular, no person shall willfully mislead the Commission or its Staff by a false statement of fact or law.

- 110.6 Persons who appear in a representative capacity in any formal proceeding shall file a written notice of appearance with the court reporter and the Secretary of the Commission on the first occasion of appearance, stating for whom the appearance is made. The notice of appearance shall state the person's name, local address, and local telephone number. The written notice shall be part of the record.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2994 (July 3, 1981); as amended by Final Rulemaking published at 39 DCR 5117, 5119 (July 10, 1992).

111 CONDUCT DURING PROCEEDINGS

- 111.1 In addition to the requirements of §108, any attorney who participates in any proceeding before the Commission shall comply with the rules and regulations of the Commission and shall adhere to the standards of the ethical conduct required of attorneys before the courts of the District of Columbia and the District of Columbia Code of Professional Conduct.
- 111.2 No restrictions in this section shall preclude an attorney from replying to charges of misconduct publicly made against him or her, or from participating in the proceedings of legislative, administrative, or other investigative bodies.
- 111.3 In all proceedings before the Commission, no attorney, other than the Commission's General Counsel or his or her designee, shall communicate, or cause another to communicate as to the merits of the cause, with any Commissioner or examiner before whom the proceeding is pending, except as follows:
- (a) In the course of official proceedings in the cause; and
 - (b) In writing directed to the Secretary of the Commission with copies served upon all other counsel of record.
- 111.4 It is improper for any party, or person representing a party, in a case before the Commission to attempt to sway the judgment of the Commission in that case by undertaking directly or indirectly, through a third party outside the hearing process, to bring pressure or influence to bear upon the Commission, its Staff, or the presiding officer assigned to the proceeding.
- 111.5 Requests for expeditious treatment of matters pending with the Commission are improper except when filed with the Secretary and copies served upon all other parties or unless made before the Commission or its hearing agent at a hearing.
- 111.6 No member of the Commission, presiding officer, or employee of the Commission shall invite or knowingly entertain any prohibited *ex parte* communication, or make any communication to any party or counsel or agent of a party, or any other person who he or she has reason to know may transmit that communication to a party or party's agent.

111.7 The Commission may disqualify and deny temporarily or permanently, the privilege of appearing or practicing before it in any way to any individual who, after a hearing, is found to have violated the requirements of this section. Violations of the requirements of this section by attorneys shall be referred to the appropriate District of Columbia Bar Committee for investigation.

111.8 Conduct amounting to contempt at any hearing before the Commission or a member of the Commission or before a presiding officer of the Commission shall be grounds for exclusion from the hearing and for summary suspension without a hearing for the duration of the hearing or of the proceeding, or any part thereof.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2995 (July 3, 1981); as amended by Final Rulemaking published at 39 DCR 5117, 5119 (July 10, 1992).

112 SUBSTITUTION OF PARTIES

112.1 In the event of the death of an individual party, or the dissolution or reorganization of a party other than an individual, the Commission, upon motion of a party or upon its own motion, may substitute the person succeeding to the rights and liabilities of the party.

112.2 In the event of a mistake in the name of the title of a party, the Commission, upon motion of a party or upon its own motion, may substitute the correct name or title.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2996 (July 3, 1981).

113 FORM OF FORMAL PLEADINGS

113.1 Pleadings, briefs, and all other documents (except informal complaints) shall be typewritten, printed or otherwise duplicated in permanent legible form upon paper eight and one-half inches (8½ in.) wide and eleven inches (11 in.) long, and exhibits, except where impracticable, annexed thereto shall be folded to the same size.

113.2 Unless printed, the impression shall be on one side of the paper only and shall be double-spaced, except that footnotes and quotations of more than two (2) lines may be single-spaced and indented.

113.3 Printed documents, except exhibits, shall be in a type not less than eleven (11) point.

113.4 Pleadings shall be bound or stapled on the left-hand side and shall have inside margins of not less than one and one-half inches (1½ in.).

113.5 Any pleadings, briefs, and other documents that do not conform to the requirements of this section may not be accepted by the Commission.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2996 (July 3, 1981); as amended by Final Rulemaking published at 39 DCR 5117, 5120 (July 10, 1992).

114 SIGNING AND VERIFICATION OF PLEADINGS

- 114.1 The original of each application, petition, complaint, answer, or amendment shall be signed in ink by each party.
- 114.2 If a party is a corporation or association, the pleading shall be signed and verified by an officer or other designated employee.
- 114.3 Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the Commission, represents by such act that he or she is authorized to do so.
- 114.4 Any attorney for or representative of a party shall also sign the pleading, and show his or her address, telephone number, and Unified Bar number if applicable.
- 114.5 Motions, notices, briefs, and petitions for reconsideration need only be signed by an attorney or representative.
- 114.6 Petitions or amendments to petitions (except petitions for reconsideration) shall be verified by each petitioner.
- 114.7 Applications or amendments to applications shall be verified by each applicant.
- 114.8 Complaints or amendments to complaints shall be verified by at least one (1) complainant.
- 114.9 Answers or amendments to answers shall be verified by at least one (1) of the respondents filing the answer.
- 114.10 Other pleadings need not be verified.
- 114.11 Verification may be made before a notary public or by certification or declaration under the penalty of perjury.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2997 (July 3, 1981).

115 SERVICE OF PLEADINGS AND OTHER DOCUMENTS

- 115.1 Petitions and applications, when filed with the Commission, shall be served on the Office of the People's Counsel of the District of Columbia.
- 115.2 Cross complaints, intervening petitions, answers, amendments, written motions, and all other documents shall be served by the parties within one (1) day after the pleading is filed with the Commission.
- 115.3 When filed, these pleadings and other documents shall be accompanied by proof of service upon all parties.
- 115.4 Proof of service of any pleading or any other document shall be by certificate of attorney, affidavit or affirmation, or receipt.

- 115.5 Service of pleadings or any other documents shall be made by delivering in person or by depositing in the United States mail, properly addressed, with first-class postage prepaid, one (1) copy of the pleading to each party.
- 115.6 [Deleted] 39 DCR 5117, 5120 (July 10, 1992).
- 115.7 [Deleted] 39 DCR 5117, 5120 (July 10, 1992).
- 115.8 [Deleted] 39 DCR 5117, 5120 (July 10, 1992).
- 115.9 [Deleted] 39 DCR 5117, 5120 (July 10, 1992).

SOURCE: Final Rulemaking published at 39 DCR 5117, 5120 (July 10, 1992).

HISTORICAL NOTE: Prior to July 10, 1992, the Public Service Commission of the District of Columbia published a Final Rulemaking notice at 28 DCR 2984, 2998 (July 3, 1981).

116 NOTICE

- 116.1 Whenever the provisions of Chapter 1 or 2 of this title or a statute require notice to be given, notice shall be served not less than ten (10) days before the hearing, order, or other proposed action of which the notice is required, except in those instances in which another period is allowable or specifically provided.
- 116.2 Notices shall be typewritten or otherwise duplicated and shall conform to the requirements of §§100 and 113 as to form and number.
- 116.3 Notice, whenever given, shall be served upon all parties, and copies filed with the Commission.
- 116.4 Service of notice shall be in person or by first class mail.
- 116.5 Proof of service shall be filed with the Commission.
- 116.6 In proceedings entered in the Formal Docket, copies of the notice of that proceeding shall be posted on the official bulletin board of the Commission and in the *District of Columbia Register* in the case of a rulemaking and may be published in a newspaper or newspapers of general circulation in the area or areas concerned.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2998 (July 3, 1981).

117 COMPUTATION OF TIME

- 117.1 When the time prescribed by Chapter 1 or 2 of this title for doing an act expires on a Saturday, Sunday, or legal holiday, that time shall extend to and include the next succeeding day which is not a Saturday, Sunday, or legal holiday. The computation of that time shall exclude the day of service or notice.
- 117.2 Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other pleading upon that party and the

notice or pleading is served upon that party by mail, three (3) days shall be added to the prescribed period.

- 117.3 Each party is bound by the type of service it receives, regardless of how other parties are served. This subsection shall not apply to filings required by the Commission.
- 117.4 Except in the case of jurisdictional time periods prescribed by statute, when an act is required or allowed to be done at or within a specific time, the Commission on its own motion for good cause shown may order the period enlarged.
- 117.5 The Commission may order an enlargement of time with or without motion or notice if request therefore is made before the expiration of the period prescribed, or upon motion made after the expiration of the prescribed period.
- 117.6 Unless otherwise specified, when a party has the right or is required to do some act within seven (7) days or less under this chapter or pursuant to a Commission order, Saturdays, Sundays and Commission holidays shall not be counted.
- 117.7 Unless otherwise specified, when a party has the right or is required to do some act in greater than seven (7) days under this chapter or pursuant to a Commission order, Saturdays, Sundays and holidays shall be counted.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2999 (July 3, 1981; as amended by Final Rulemaking published at 39 DCR 5117, 5120 (July 10, 1992).

118 - 119 [RESERVED]

120 FORMAL HEARINGS: GENERAL PROVISIONS

- 120.1 The Commission may order a formal hearing in any proceeding in which it determines that a formal hearing is necessary.
- 120.2 The notice of hearing shall designate the time and place of the hearing.
- 120.3 Unless otherwise specifically ordered, formal hearings shall be in the hearing room at the office of the Commission.
- 120.4 The Commission shall give notice of a formal hearing, or of any change in date or place of such hearing. Notice under this rule shall be exempt from the requirements of §116.
- 120.5 A formal hearing shall be held before the Commission, or any member or agent of the Commission as the presiding officer for that purpose.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3000 (July 3, 1981).

121 PRE-HEARING CONFERENCE

- 121.1 The Commission, or any presiding officer to whom a case has been assigned for hearing, shall give notice directing all parties to attend a pre-hearing conference.
- 121.2 At least five (5) calendar days before the pre-hearing conference, each party shall serve and file a statement of proposed issues and order of procedure with the Commission.
- 121.3 The parties to the proceeding, or their representatives, and representatives of the Commission designated by it for the purpose, shall be conferees.
- 121.4 The purpose of the pre-hearing conference shall be to do the following:
- (a) Formulate the issues;
 - (b) Arrange for the exchange of proposed exhibits;
 - (c) Make any necessary amendments to the pleadings;
 - (d) Obtain admissions of fact and of documents which will avoid unnecessary proof;
 - (e) Determine the number of witnesses;
 - (f) Set forth any extraordinary rules of procedure for the conduct of the hearing(s);
 - (g) Adopt a procedural schedule for the proceedings; and
 - (h) Pursue any other matters as may aid in the disposition of the proceeding.
- 121.5 Any agreements reached at the conference by the parties shall be promptly reduced to writing by the Commission's designee and submitted to the Commission for approval.
- 121.6 Any participant who fails to attend a pre-hearing conference of which the participant had due notice shall, with respect to any matter reasonably encompassed in the notice of the prehearing conference, be deemed to have waived any objections to any agreement reached, or ruling made thereon at the conference.
- 121.7 At the conclusion of the pre-hearing conference, the Commission shall issue, as soon thereafter as possible, an Order and Report on Prehearing Conference, designating the parties, setting forth the issues to be decided in the hearing(s), any extraordinary rules or procedure, and the procedural schedule of the proceeding.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3000 (July 3, 1981).

122 INFORMATION REQUESTS

- 122.1 A party's request for information from parties other than a utility shall be submitted in writing no later than ten (10) days after the filing of testimony by the party receiving the request.
- 122.2 A party to whom a request is made other than a utility company shall respond to that request within fifteen (15) days.
- 122.3 In proceedings where a utility company is a party, requests for information from the utility company shall be served on the company no later than thirty (30) days from the date of the Order and Report on the Prehearing Conference unless otherwise specified by the Commission. The utility company shall respond to each of the requests within twenty-one (21) days after service of the data request.
- 122.4 Data requests shall be considered continuing in nature. Substantially revised information shall be provided without specific additional requests.
- 122.5 Additional data requests may be served upon amendment of previous testimony or subsequent to the filing of supplemental or rebuttal testimony; Provided, that those requests are served within ten (10) days of the filing of the amended, supplemental or rebuttal testimony. Responses to these requests shall be served on the requesting party within ten (10) days after service of the request.
- 122.6 Any party to whom a response is provided who believes that the data needs clarification may within five (5) business days request the clarification or follow-up information; however, follow-up data requests shall be limited to one (1) per original request; Provided, that the information is within the scope of the original request. Responses to those requests shall be provided to the requesting party within five (5) business days after receipt of the request. If a party or Staff desires more than one follow-up request, that party may seek permission from the Commission to ask for additional follow-up data requests. The Commission will allow for additional follow-up data requests only upon a showing of a compelling need for the additional requests.
- 122.7 Data requests shall be in writing and shall be served upon all parties. One copy of each data request shall be submitted to the Commission's Secretary.
- 122.8 The staff may request information from the utility at any time, and those requests originally need not be in writing. The oral request, if submitted with respect to a contested case in which Staff is participating shall be reduced to a written memorandum and served on all parties within three (3) days of the initial request.
- 122.9 Responses to data requests shall be submitted to the following:
- (a) The party making the request;
 - (b) The Secretary of the Commission; and

- (c) If a party or Staff wishes to obtain data supplied in response to another party's request, that party or Staff shall obtain the information from the Commission Secretary's Office.
- 122.10 If a response to a particular information request is so voluminous that sending copies to all parties would be unduly burdensome, the responding party may serve the response on the following:
 - (a) The requesting party;
 - (b) The Secretary of the Commission; and
 - (c) The Commission's Office of Accounting and Finance.
- 122.11 If a response is served pursuant to §122.10, the responding party shall give notice to other parties expecting a response, that a copy may be inspected by applying to the Secretary of the Commission.
- 122.12 Large volumes of materials to be examined in response to a request may be made available for examination at reasonable times at the responding party's offices.
- 122.13 Data responses, to the extent possible, shall be submitted in the requested format, including machine readable forms. All data responses shall identify the name and the title of the person sponsoring the response.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3001 (July 3, 1981); as amended by Final Rulemaking published at 29 DCR 2719 (June 25, 1982); by Final Rulemaking published at 33 DCR 2229 (April 11, 1986); by Final Rulemaking published at 39 DCR 5117, 5120 (July 10, 1992); and by Final Rulemaking published at 42 DCR 2340, 2341 (May 12, 1995).

123 OBJECTIONS TO REQUESTS AND MOTIONS TO COMPEL

- 123.1 Unless otherwise ordered by the Commission, the time for serving a notice of objection or notice of unavailability to all or any part of a request for production of documents, data requests, or interrogatories, shall be five (5) days after service of the request. The notice of objection shall state in substance the nature of the objection. One copy of the notice of objection or notice of unavailability shall be submitted to the Secretary of the Commission.
- 123.2 Motions to compel responses to requests for production of documents, data requests, interrogatories, and other discovery actions shall not be entertained unless filed within five (5) days after service of the response, or five (5) days after service of a notice of objection by opposing counsel. The motion shall state in substance the factual and legal grounds for the action.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3002 (July 3, 1981); as amended by Final Rulemaking published at 39 DCR 5117, 5122 (July 10, 1992).

124 SUBPOENAS

- 124.1 Subpoenas for the attendance of witnesses may be issued by a member of the Commission or a member of the Staff designated by the Commission, upon application in writing.
- 124.2 Subpoenas for the production of books, records, papers, or other documents may be issued by the Commission upon application in writing.
- 124.3 Subpoenas issued pursuant to §124.2 shall be under the seal of the Commission, upon a form approved and provided by the Commission, and shall so describe the document ordered to be produced as to permit ready identification.
- 124.4 A subpoena may be served in the same manner and by any person authorized by the Civil Rules of the Superior Court of the District of Columbia.
- 124.5 If service of a subpoena is by a United States Marshal or his or her deputy, that service shall be evidenced by his or her return thereon.
- 124.6 If service is made by any other person, that person shall note the manner, place, and time of service, and shall return the affidavit on or with the original copy of the subpoena.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3003 (July 3, 1981); as amended by Final Rulemaking published at 39 DCR 5117, 5122 (July 10, 1992).

125 DEPOSITIONS: GENERAL PROVISIONS

- 125.1 The Commission may, either on its own initiative, pursuant to a prehearing conference, or upon proper motion of a party to a proceeding, issue an order to take a deposition.
- 125.2 A motion to take a deposition shall be filed with the Commission no less than ten (10) days before the proposed date for taking the deposition, unless the Commission shall permit otherwise.
- 125.3 The motion shall set forth the reason for the deposition, the place and time of taking, the names and addresses of the deponents, and whether the deposition is to be based upon written interrogatories or upon oral examination.
- 125.4 If the deposition is to be based upon oral examination, the motion shall contain a statement of the subject-matter concerning which each deponent will testify.
- 125.5 If the deposition is to be based on written interrogatories, the motion shall be accompanied by the interrogatories to be propounded.
- 125.6 Copies of all motions to take depositions, and accompanying interrogatories, if any, shall be served on all parties.

- 125.7 A party served with a motion to take a deposition may object to the taking of the deposition by filing with the Commission and serving upon all parties within five (5) days after receipt of the motion to take a deposition, a notice of the objection stating the reasons therefor.
- 125.8 A party served with a motion to take a deposition on written interrogatories shall have five (5) days, or any other time as the Commission may permit, after receipt of service of that motion, within which to file and serve written cross-interrogatories.
- 125.9 An application to take a deposition in a foreign country shall be entertained when necessary or convenient, and authority to take such deposition shall be granted upon such notice and other terms and directions as are lawful and appropriate.
- 125.10 Depositions shall be filed with the Commission before they are offered as evidence. No deposition shall constitute a part of the record in any proceeding until received in evidence at a hearing, unless, prior to the final submission of the case, the Commission determines otherwise.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3003 (July 3, 1981).

126 CONDUCT OF DEPOSITIONS

- 126.1 The court reporter before whom the deposition is to be taken shall put the deponent under oath or affirmation and shall personally, or by someone acting under his or her direction and in his or her presence, record the testimony of the deponent.
- 126.2 The testimony shall be transcribed unless the parties agree otherwise.
- 126.3 All objections made at the time of the examination to the manner of taking the deposition or the evidence presented, or to the conduct of any party, and any other objections to the proceedings, shall be noted by the court reporter upon the deposition. Evidence objected to shall be taken subject to the objections.
- 126.4 Any party served with a notice to take an oral deposition, may cross-examine a deponent whose testimony is taken under that deposition. In lieu of cross-examination, parties served with notice of taking a deposition may transmit written interrogatories or cross-interrogatories to the court reporter taking the deposition, who shall propound them to the deponent and record the answers verbatim together with any objection interposed thereto by adverse parties.
- 126.5 When the testimony is fully transcribed the deposition of each deponent shall be submitted to him or her for examination and shall be read to or by him or her.
- 126.6 Any changes in form or substance which the deponent desires to make shall be entered upon the deposition by the court reporter with a statement of the reasons given by the deponent for making them.

- 126.7 The deposition shall then be signed by the deponent, unless the parties by stipulation waive the signing or the deponent is ill or cannot be found or refuses to sign.
- 126.8 If the deposition is not signed by the deponent, the court reporter shall sign it and state on the record the fact of the waiver or of the illness or absence of the deponent or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress, the Commission holds that the reasons given for the refusal to sign required rejection of the deposition in whole or in part.
- 126.9 The court reporter taking the deposition shall certify on the deposition that the deponent was duly sworn or put on affirmation by him or her and that the deposition is a true record of the testimony given by the deponent, and that the court reporter is not of counsel or attorney to either of the parties, or interested in the event or the proceeding or investigation.
- 126.10 The court reporter shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of [here insert name of deponent]" and shall promptly send the original and three (3) copies of all exhibits, where practicable, by registered mail to the Commission.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3004 (July 3, 1981); as amended by Final Rulemaking published at 39 DCR 5117, 5122 (July 10, 1992).

127 WRITTEN TESTIMONY

- 127.1 In addition to complying with the rules relating to pleadings, and unless otherwise ordered by the Commission, written testimony shall include the following.
- (a) A statement identifying the witness;
 - (b) A statement of occupational history;
 - (c) A statement of educational history;
 - (d) A statement of qualification to give testimony before the Commission;
 - (e) A statement of the subject area and purpose of the testimony;
 - (f) A statement, setting forth an explanation of any exhibits accompanying such testimony, including identification of the source materials used in preparing any such exhibits; and
 - (g) A statement as to whether any such exhibits were prepared by the witness or under his direction.
- 127.2 All written testimony shall contain line numbers on each page in the lefthand margin and shall be subject to the rules regarding preparation and numbering of exhibits.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3006 (July 3, 1981).

128 PARTIES WITH COMMON INTERESTS

- 128.1 Parties with common interests or positions are encouraged to align themselves to make joint oral and written presentations, including briefing and presentation of evidence.
- 128.2 Any alignment of parties shall be without derogation to the right of any party to present a separate point of view where the party position differs from that of the group to which he or she is aligned.
- 128.3 In making any filing where more than one party is in agreement, the parties may jointly file, and in that case, the party filing shall clearly designate the parties who join therein.
- 128.4 Subject to the approval of the Commission, any and all of the parties may, by stipulation in writing filed with the Commission or presented at a hearing, state their agreement upon any matter in a proceeding.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3006 (July 3, 1981).

129 STATUS CONFERENCES

- 129.1 Upon the motion of any party or upon its own motion, the Commission may convene a status conference.
- 129.2 Participants shall be prepared to discuss procedural and substantive matters involved in the proceeding, and shall be authorized to make commitments with respect to those matters.
- 129.3 Among specific items to be discussed are stipulations as to facts, authentication of documents, procedural dates, and limitation of issues and witnesses. Participants shall be prepared to resolve any other matters as may aid in the disposition of the proceeding.
- 129.4 A status conference order setting forth the proceeding may be prepared.
- 129.5 Any participant who fails to attend a status conference of which the participants have due notice shall, with respect to any matters reasonably encompassed in the notice of the conference, be considered to have waived any objections to any agreement reached or ruling made.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3007 (July 3, 1981).

130 SETTLEMENT AND STIPULATION CONFERENCES

- 130.1 Unless otherwise ordered, counsel for the Staff shall not initiate arrangements for an initial settlement conference. Staff shall not schedule a conference prior to any

deadlines which may exist for filing petitions to intervene in or to become a party to a proceeding.

- 130.2 Staff shall file a report on the outcome of the initial settlement conference within ten (10) days after the convening of the conference.
- 130.3 The initial settlement conference scheduled by the Staff under this section shall not preclude the parties from meeting at any other times as they deem necessary for the purpose of settlement and stipulation.
- 130.4 All parties shall be allowed to file proposed orders on matters of agreement.
- 130.5 All parties participating in settlement conferences shall do so either personally or through representatives empowered to act on behalf of the party and ultimately bind the party to any settlement.
- 130.6 Statements made and documents considered by parties during the course of settlement negotiations and conferences shall be confidential and non-discoverable, and shall not be admissible as evidence or raised in arguments by parties.
- 130.7 All filings contemplated under this section shall recite, in addition to the matters agreed upon at the conference, the date, time, and place of the conference, and the names of the parties in attendance.
- 130.8 A party may waive the confidentiality of its own disclosures. A party who has made public disclosures about matters that have also been considered in settlement negotiations and conferences may be deemed to have waived the confidentiality of its own disclosures, but not those of other parties.
- 130.9 In order to ensure the confidentiality of settlement proceedings, persons who are not parties may be excluded from settlement conferences and negotiations.
- 130.10 Settlements may be presented at any time prior to the issuance of a final decision. When a settlement is presented to the Commission, the settlement shall do the following:
- (a) Be reduced to writing;
 - (b) Contain all of the terms and conditions agreed upon by the signatories;
 - (c) Be clearly and accurately labeled unanimous or nonunanimous;
 - (d) Be clearly and accurately labeled partial or full;
 - (e) Indicate whether any party who has not executed the settlement will oppose its adoption;
 - (f) Indicate whether the provisions of the agreement are severable; and
 - (g) Stipulate the admission into evidence of testimony and exhibits filed in the proceeding by the signing parties; Provided, that in the case of a partial

settlement, only testimony and exhibits related to the settled matters shall be stipulated to for admission into evidence.

- 130.11 A full settlement presented in a base rate change application or other contested case, which would have an impact on a utility's customers, competitors, or the public, shall only be accepted after a hearing on whether the settlement is in the public interest.
- 130.12 At the hearing held pursuant to §130.11, non-signatory parties shall be provided the opportunity to cross-examine the witness(es) tendered by the signatory parties on whether the settlement agreement is in the public interest.
- 130.13 A Commission decision to adopt a nonunanimous settlement as a resolution on the merits shall be based upon substantial evidence upon the record.
- 130.14 A party who does not sign settlement documents may not defeat or challenge a settlement simply by refusing to sign the document.
- 130.15 A settlement which fully or partially resolves a proceeding, before the Commission, shall have no precedential effect on future proceedings.
- 130.16 Given the negotiated nature of a settlement, the Commission shall either accept or reject a settlement in its entirety, unless the parties have specifically stated that the provisions of the settlement are severable.
- 130.17 If a settlement is rejected, the Commission may take various steps, including the following:
- (a) Allow the parties time to renegotiate a settlement;
 - (b) Propose alternative terms to the parties and allow the parties a reasonable time within which to elect to accept such terms or request other relief; or
 - (c) Proceed with litigation of the case.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3007 (July 3, 1981); as amended by Final Rulemaking published at 42 DCR 2340, 2341 (May 12, 1995); and by Final Rulemaking published at 39 DCR 5117, 5122 (July 10, 1992).

131 **[DELETED]** 42 DCR 2340, 2341 (May 12, 1995).

132 CONDUCT OF HEARINGS

- 132.1 Evidence shall be presented by those participating in the sequence set forth in the Order and Report on Prehearing Conference.

- 132.2 Continuances, extensions of time, and adjournments may be ordered by the Commission, or its presiding officer, upon written motion of a party or upon its own motion.
- 132.3 If, in the judgment of the presiding officer, convenience or necessity so require, he or she may, after opening a hearing, postpone the hour or change the place thereof without the requirement of a motion.
- 132.4 Motions made during a hearing may be oral; Provided, that the following motions shall be in writing:
- (a) Motions to dismiss;
 - (b) Motions requesting a more sufficient pleading;
 - (c) Motions for a Bill of Particulars;
 - (d) Motions to strike objectionable written matter other than pre-filed testimony;
 - (e) Motions for the addition of parties or dismissal of improper parties; and
 - (f) Motions to quash a subpoena.
- 132.5 All written motions affecting the conduct of a hearing shall be filed not later than three (3) business days before the scheduled hearing date.
- 132.6 If a party desires to file a written motion less than three (3) business days before the hearing, that party shall request permission from the Commission.
- 132.7 Respondents shall file the answers to motions by 3:45 p.m. on the business day immediately preceding the scheduled hearing date.
- 132.8 There shall be submitted to the Commission or the presiding officer no later than 10:00 a.m. on the first day of hearings a list of the witnesses that are scheduled to appear before the Commission on that day and the following day, and an identification of the material and subject areas on which each witness is to be examined.
- 132.9 The list of witnesses shall be cumulative and shall be submitted no later than 10:00 a.m. on each succeeding day of hearings.
- 132.10 Unless otherwise ordered, the Commission Secretary shall be responsible for submitting the list of witnesses. Upon agreement of counsel for the parties and upon approval of the Commission, witnesses with particular scheduling constraints may be presented at a hearing at a prearranged date and time.
- 132.11 Counsel and all other participants other than witnesses testifying shall stand while addressing the Commission and witnesses. Not more than one counsel for each party shall be entitled to examine any one witness or address the Commission on any one matter without the permission of the Commission.

- 132.12 Whenever a party plans to utilize data or information alleged to be confidential or proprietary, the party shall advise the Commission in advance to avoid disclosure of the information to persons or parties who have not executed a confidentiality agreement under §150.2 of this chapter.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3008 (July 3, 1981); as amended by Final Rulemaking published at 39 DCR 5117, 5125 (July 10, 1992).

133 EXHIBITS

- 133.1 All direct and rebuttal testimony shall be prepared in the form of written exhibits.
- 133.2 All revisions and corrections to case-in-chief and rebuttal exhibits shall be presented by way of replacement pages and submitted no later than five (5) business days prior to the beginning of hearings. Only the correction of minor typographical errors shall be allowed after this period.
- 133.3 The title of each exhibit shall state concisely what the exhibit contains.
- 133.4 Exhibits containing prepared written testimony shall contain line numbers on each page, in the lefthand margin. All such testimony shall be authenticated by an appropriate affidavit of the witness. An exhibit containing rebuttal testimony shall also include the exhibit, page and line numbers of the evidence that it purports to rebut.
- 133.5 Case-in-Chief exhibits and rebuttal exhibits shall be served on each party, and twenty (20) copies shall be filed with the Secretary for use by the Commission and its staff. In addition, one (1) copy shall be sent to the Commission's General Counsel, and one (1) copy to each Commission agent and consultant previously identified by the Commission's Secretary or General Counsel.
- 133.6 Each party shall, for the formal record, submit by 10:00 a.m. on the first hearing date in each case one fully corrected set of its case-in-chief and rebuttal exhibits.
- 133.7 Narrative testimony and exhibits shall be identified prior to filing as follows:
- (a) The name of the party shall be set forth on each exhibit in the form of an acronym or initials (e.g., PEPCO, WGL, PC or OPC, C&P, PSC, GSA, AOBA);
 - (b) When the document to be filed is the testimony of a witness, each set of the testimony shall, following the party's initials, bear a letter (in upper case); thus, the first witness of the Company shall have his or her testimony identified, for example, as PEPCO (A); the second witness, PEPCO (B), and so on. Each witness shall retain the same letter, however, the first witness' second set of testimony shall be lettered (2A) and so on;
 - (c) If there is an exhibit attached on the testimony of the witness, that exhibit shall bear an Arabic number. Thus, the first exhibit of the first witness would be marked, for example, PEPCO (A)-1. His or her second exhibit shall be marked, for example, PEPCO (A)-2, and so on. Any exhibit attached to the

second set of testimony of a witness would be marked, for example, PEPCO (2A)-l; and

- (d) If there is no testimony submitted with the exhibit, then the exhibit shall merely bear the capitalized initials of the party and be numbered sequentially with Arabic numbers (e.g., PEPCO-1).
- 133.8 The Commission may, at the hearing, sequentially number all exhibits by the insertion of a prefix number before the letters of the party.
- 133.9 Not later than 10:00 a.m. of the morning of a hearing, there shall be provided to all parties, Commissioners and agents, a list of all cross-examination exhibits that the party proposes to introduce on the record. This list shall be accompanied by copies of those exhibits.
- 133.10 As subsequent filings are made, the list of cross-examination exhibits shall be cumulatively updated. Any party proposing to use a document in examination of a witness shall have it marked for identification and shall distribute copies to the Commission, for the record, and to the parties by 10:00 a.m. the day of the hearing.
- 133.11 The list of cross-examination exhibits shall contain the following information:
 - (a) The caption and docket number of the case;
 - (b) A title showing the party proponent of the list and the date of the list and the date of the list it supersedes, if any;
 - (c) The designation of the document in letters and numbers as the first column; and
 - (d) A description of the document in the second column.
- 133.12 Documents, including, cross-examination exhibits, containing allegedly confidential or proprietary information shall be identified with a title which is not confidential or proprietary, thus permitting reference to the document in a manner which does not raise confidentiality issues.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3009 (July 3, 1981); as amended by Final Rulemaking published at 29 DCR 2719, 2729 (June 25, 1982); by Final Rulemaking published at 33 DCR 3267 (July 1, 1983); by Final Rulemaking published at 39 DCR 5117, 5125 (July 10, 1992); and by Final Rulemaking published at 42 DCR 2340, 2341 (May 12, 1995).

134 ADMISSION OF EVIDENCE

- 134.1 The Federal Rules of Evidence shall be applied in formal hearings; Provided, that the presiding officer, or the Commission may, after informing the parties of an intention to do so, relax those rules in any hearing when, in his, her, or its judgment, the ends of justice would be better served by so doing.
- 134.2 Formal exceptions to rulings of the presiding officer, or of the Commission, are unnecessary. It is sufficient that a party, at the time the ruling is made or sought,

makes known the action which he or she desires to be taken, or his or her objection to an action taken, and his or her grounds for such action or objection.

134.3 The Commission may, in its discretion, limit the cross-examination of any witness.

134.4 Where written matter offered in evidence is embraced in a document containing another matter which is not intended to be offered in evidence, the offering party shall present the original document for inspection at the hearing, and shall offer an exact copy of the matter which is to be introduced, unless the presiding officer, or the Commission, determines that the matter is short enough to be read into the record. Other parties shall be afforded opportunity to introduce in evidence, in like manner, other portions of the original document.

134.5 When any portion of the record before a body other than the Commission is offered in evidence, true copies of that portion shall be presented for the record in the form of an exhibit, or that portion may, without objection, be incorporated in the record by reference.

134.6 For purposes of this section, true copies of the official record of the Commission may be certified in writing by the Commission Secretary or by any attorney authorized to practice before the Commission.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3011 (July 3, 1981); as amended by Final Rulemaking published at 39 DCR 5117, 5125 (July 10, 1992).

135 TRANSCRIPTS OF HEARINGS

135.1 An official court reporter designated by the Commission shall make an official transcript of the testimony taken.

135.2 After the close of the hearing this transcript, together with any exhibits, briefs, or other documents filed in the proceeding, shall be filed with the Secretary of the Commission.

135.3 Parties desiring copies of the official transcript shall arrange to secure those copies from the Commission.

135.4 Motions to correct the official transcript shall be acted upon by the Commission or the presiding officer designated to conduct the hearing.

135.5 Motions to correct the record shall be filed with the Commission within ten (10) days after the receipt of the transcript of the final day of hearings in the proceeding.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3012 (July 3, 1981).

136 WITNESS FEES

136.1 Each witness who shall appear before the Commission or the presiding officer pursuant to an order for deposition or subpoena, shall receive the same fee for

attendance and mileage as is currently paid to witnesses by the District of Columbia Superior Court.

- 136.2 No witness subpoenaed by the Commission at the request of any party shall be entitled to compensation for attendance or travel unless the Commission shall certify that the witnesses testimony was material to the matter investigated, and that attendance as a witness was reasonably necessary.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3012 (July 3, 1981).

137 POST-HEARING BRIEFS

- 137.1 Post-hearing briefs shall be filed at such times as shall be fixed by the Commission or the presiding officer in each case.
- 137.2 The applicant shall brief all issues designated by the Commission in the Report and Order on Pre-hearing Conference and any other issues designated by the Commission during the proceeding.
- 137.3 All post-hearing briefs shall contain a title sheet clearly identifying the parties submitting the brief, including name and title, local address, and local telephone number.
- 137.4 A subject index with page references and a list of all authorities cited alphabetically arranged with page references shall be included.
- 137.5 Authorities most heavily relied upon shall be asterisked. Lengthy quotations from any records or from authorities shall not be included.
- 137.6 The Commission may reject briefs unnecessarily prolix or which do not conform to the rules of the Commission.
- 137.7 Each participant proposing adjustments to test year expenses, rate base, revenues or rate of return, shall include, as an appendix to the initial post-hearing brief or memorandum, a schedule listing each proposed adjustment beginning with the applicant's original unadjusted test year presentation, and including the accepted adjustments of all other participants.
- 137.8 The schedule shall specifically refer to evidence of record which reflects the details of all calculations that support the proposed adjustments. The schedule shall show the impact on the income deficiency or excess earnings, rate base and revenue requirement.
- 137.9 When an intervening participant submits testimony on a specific issue and does not adopt the evidence of other participants on the remaining issues, the intervening participant shall only prepare a schedule on the issues addressed in the participant's testimony and evidence.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3013 (July 3, 1981); as amended by Final Rulemaking published at 36 DCR 5651 (August 4, 1989).

138 PROPOSED FINDINGS AND CONCLUSIONS

- 138.1 Each party to the proceeding, after the close of the record within the time prescribed for post-hearing briefs, or as otherwise directed by the Commission shall serve on all parties and file with the Commission proposed findings of fact and conclusions of law for consideration by the Commission.
- 138.2 The proposed findings of fact and conclusions of law shall be referenced to the record of the proceedings.
- 138.3 The proposed findings of fact and conclusions of law may be included in the post hearing briefs required by this section.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3013 (July 3, 1981).

139 ORAL ARGUMENT

- 139.1 The Commission or presiding officer, in its discretion, may permit or require oral argument during or at the close of a hearing or on any brief, memorandum, motion, application, or petition filed.
- 139.2 Arguments on the admissibility of evidence or other oral argument during the course of the taking of testimony shall be made on the record.
- 139.3 The formal oral argument of a case shall be reported in the official transcript.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3014 (July 3, 1981).

140 RECONSIDERATION

- 140.1 Any person affected by any final order or decision of the Commission may, within thirty (30) days after the publication of the order or decision, file with the Commission an application in writing requesting a reconsideration or modification of the matters involved. (See Paragraph 64 of the Act of March 4, 1913, as amended, D.C.Code §43-904 (1981 Ed.))
- 140.2 Applications for reconsideration or modification shall set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous.
- 140.3 Responses to applications for reconsideration or modification shall be considered by the Commission only if filed with the Commission within five (5) business days after receipt of the application.
- 140.4 The Commission may, in its discretion, permit or require oral argument or briefs or both upon application for reconsideration or modification.
- 140.5 The Commission shall, within thirty (30) days after the filing of the application, either grant or deny the application for reconsideration or modification. Failure

by the Commission to act within that period shall be considered a denial of the application.

- 140.6 If the application is granted, the Commission shall, after notice to all parties, either with or without a hearing, rescind, modify, or affirm its order or decision.
- 140.7 The filing of an application for reconsideration shall act as a stay upon the execution of the order or decision of the Commission until the final action of the Commission upon the application.
- 140.8 Any application for reconsideration or modification filed on the thirtieth (30th) day after the publication of the order or decision which the application seeks to have reconsidered or modified, shall be filed on or before the close of business of that day.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3012 (July 3, 1981); as amended by Final Rulemaking published at 29 DCR 2719, 2720 (June 25, 1982).

141 - 143 [RESERVED]

144 DECLARATORY ORDERS

- 144.1 Upon written petition of any interested person, the Commission, within its discretion, may issue a declaratory order regarding the applicability of any rule, regulation, or statute enforceable by it, to terminate a controversy (other than a contested case) or to remove uncertainty.
- 144.2 A declaratory order, as provided in this section, shall be binding between the Commission and the petitioner as to a particular set of facts and circumstances unless such order is altered or set aside by a court.
- 144.3 A declaratory order is subject to review in the manner provided in D.C. Code, title 43, Chapter 9 for the review of orders and decisions, except that the refusal of the Commission to issue a declaratory order shall not be subject to review.
- 144.4 Each petition shall contain the following information:
- (a) The name and address of petitioner;
 - (b) A clear and concise statement of facts and issues upon which the petition is based, and the position and interest of the petitioner;
 - (c) A reference to the specific section or sections of the statute, rule, or regulation, for which a declaratory order is sought;

- (d) Signature of petitioner; and
- (e) The signatory's address and telephone number.

144.5 The Commission may decline to issue a declaratory order in its discretion and will not consider requests based upon hypothetical facts, past transactions, or nameless parties.

SOURCE: Final Rulemaking published at 34 DCR 2034 (March 27, 1987).

145 ADVISORY OPINIONS

145.1 Any employee of the Commission or person may apply to the Office of General Counsel for an advisory opinion as to the interpretation or applicability of any Commission rule or action. Advisory opinions requested in writing or rendered in writing by the Office of General Counsel in the course of a pending proceeding shall be forwarded to all parties of record.

SOURCE: Final Rulemaking published at 29 DCR 97 (January 1, 1982).

146 WAIVER

146.1 The Commission may, in its discretion, waive any of the provisions of Chapters 1 and 2 of this title in any proceeding after duly advising the parties of its intention to do so.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3036 (July 3, 1981).

147 - 149 [RESERVED]

150 CONFIDENTIAL AND PROPRIETARY INFORMATION

150.1 Any materials submitted by a party, which it claims are confidential or proprietary, shall be filed under seal and shall not be used except in connection with the proceeding in which the material is filed.

150.2 All submissions filed under seal shall be made available only to parties and persons who have signed an appropriate confidentiality or proprietary agreement with the party claiming its information is proprietary. Information obtained pursuant to the execution of a confidentiality/proprietary agreement with the party claiming its information is proprietary shall be held solely for use in or in preparation of briefs, comments, documents and exhibits, data responses, cross-examination, other pleadings, petitions for reconsideration or appeals in the regulatory proceeding in which the information was originally obtained.

150.3 If any party intends to use or actually uses information in briefs, comments, testimony, exhibits, data responses, cross-examination, or other documents to be filed in a case which information is obtained pursuant to a confidentiality or proprietary agreement, the following shall apply:

- (a) The brief, comments, testimony, exhibits, data responses, or other documents containing the alleged proprietary information shall be sealed and delivered to the Commission Secretary by that party and to those other parties which have signed an appropriate confidentiality or proprietary agreement. An original and twelve (12) copies shall be filed under seal with the Commission Secretary;
- (b) The pages containing allegedly proprietary information shall be clearly marked and the cover of the documents shall indicate that proprietary information is contained inside;
- (c) Parties who have not signed an appropriate confidentiality or proprietary agreement shall receive the briefs, comments, testimony, exhibits, data responses, or other documents with the alleged proprietary information omitted and the following notice inserted: **"This portion contains information which alleges to be proprietary. Please contact for an appropriate proprietary agreement or file with the Commission for a Proprietary Information Determination. Parties may seek a Commission ruling on contention at any time in this proceeding."** An original and twenty-five (25) copies of the document shall be filed with the Commission and served upon all parties;
- (d) Cross-examination by any party, involving that information which another party alleges to be proprietary, shall be conducted during proceedings which shall be closed to all those who have not signed an appropriate proprietary or confidentiality agreement; Provided, that there has been no prior Commission determination that such information is not proprietary. The transcript of the proceeding shall be kept under seal; and
- (e) If any party challenges the appropriateness of a claim that information is proprietary or confidential, the procedures set forth under §150.5 of this chapter shall apply.

150.4 If a party, who has not signed a proprietary agreement with the party claiming its information is proprietary, desires to obtain proprietary information from a party that has the information, either through obtaining data requests, during the cross-examination hearing, or through obtaining sealed briefs, comments, testimony or exhibits, the requesting party shall do the following:

- (a) Contact the party claiming its information is proprietary for an appropriate proprietary agreement; or
- (b) File with the Commission for a Proprietary Information Determination under §150.5.

150.5 If at any time a party challenges a claim of the party who asserts that its information is proprietary, the following procedures shall apply:

- (a) The party challenging the claim that information is proprietary shall file with the Commission for a proprietary Information Determination, which shall consist of a request for a ruling on whether the particular information is proprietary (hereafter referred to as "Proprietary Information Determination Request"). Copies of the Proprietary Information Determination Request shall be hand-delivered to the Commission, the party claiming that its information is proprietary, and signatories to the proprietary agreement. Parties to the proceeding who have not signed the proprietary agreement shall only receive notice that a Proprietary Information Determination Request has been filed rather than a copy of the filing;
- (b) When any Proprietary Information Determination Request has been filed, the party claiming that its information is proprietary shall deliver under seal all of the relevant documents to the Commission Secretary for an in camera inspection by the Commission and its authorized agents;
- (c) When a Proprietary Information Determination Request has been filed, the party claiming that its information is proprietary shall deliver to the Commission the relevant proprietary agreements signed by each party permitted access to the alleged proprietary information;
- (d) The party claiming that its information is proprietary, without order or action from the Commission, shall file an initial brief stating in detail the basis of its proprietary claim within five (5) days after the Proprietary Information Determination Request is filed. Within five (5) days thereafter, the party that challenged the proprietary claim shall file a detailed brief in response to the initial brief of the party claiming that its information is proprietary. Within three (3) days after that filing, the party claiming that its information is proprietary may file a reply brief. If either the initial or reply brief of the party claiming that its information is proprietary or the brief of the party challenging the claim uses information that allegedly is proprietary, those pleadings shall be filed under seal;
- (e) The burden of ultimately persuading the Commission that the subject information is proprietary is upon the party claiming that its information is proprietary; and
- (f) A party shall not make public, information regarding the disputed proprietary information until a ruling is received from the Commission. Following the ruling, the information shall be made available only pursuant to the Commission's order; Provided, that an application for reconsideration of the Commission's order filed by the party claiming that its information is proprietary will act as a stay of such order pending reconsideration.

150.6 If an appeal is taken from a final Commission order in the regulatory proceeding, all information under seal at that time shall remain until the District of Columbia Court of Appeals issues an order on the appeal.

- 150.7 The parties retain the right to object to the admissibility of any specific proprietary information on any proper grounds, including relevancy or materiality to the proceeding.
- 150.8 When the Commission's order in the regulatory proceeding is final and no longer subject to appeal, the sealed portion of the Commission's record shall be retained under seal by the Commission. All parties and persons having material furnished pursuant to a proprietary agreement (including, but not limited to, notes or records made from such material) or copies of documents kept under seal by the Commission during the course of such proceeding (including, but not limited to, briefs, comments, testimony, exhibits, transcripts, and data responses), upon request by the party claiming that its information is proprietary, shall deliver all such material to that party.
- 150.9 Access to the documents kept under seal by the Commission shall be limited to the Commission, its assistants and agents, and those parties who have executed a proprietary agreement.
- 150.10 All persons or parties executing a proprietary agreement shall be responsible for the protection of the confidentiality of any proprietary information in their control.

Source: Final Rulemaking published at 39 DCR 5117, 5125 (July 10, 1992).

199 DEFINITIONS

- 199.1 When used in this chapter, the following terms and phrases shall have the meaning ascribed:

Applicant - a person who files an application for any action by the Commission.

Commission - the Public Service Commission of the District of Columbia.

Complainant - a person who files a complaint with the Commission.

Days - calendar days, unless otherwise expressly defined.

Ex Parte Communication - an oral or written communication, not on the public record, which is relevant to the merits of a proceeding and with respect to which reasonable prior notice to all parties has not been given.

Filing - any pleading or other document requiring Commission action or attention which is presented to the Commission's Secretary, in accordance with this chapter, for placement in the Commission's General or Formal Docket. (39 DCR 5129)

Full Settlement - a settlement which addresses all of the issues in a contested case. (39 DCR 5129)

Interested Person - with respect to a proceeding means any person who is a party to a matter pending before the Commission or represents a party to any such matter.

Intervenor - a person whose petition to intervene in a proceeding has been granted.

Nonunanimous Settlement - a settlement that is opposed in whole or in part by any of the parties to the case in which such settlement is proposed for adoption by the Commission. (39 DCR 5129)

Partial Settlement - a settlement which addresses some, but not all, of the issues in a contested case. (39 DCR 5129)

Party - any person who is an applicant, complainant, petitioner, respondent, or intervenor in a proceeding.

Person - an individual, partnership, association, firm, corporation, body politic, municipal organization, governmental body, joint stock company, receiver, trustee, official acting in his or her official capacity, or any other organization or institution.

Petitioner - a person who files a petition with the Commission.

Pleading - complaints, cross complaints, amended and supplemental complaints, petitions, applications, answers, written motions, and amendments to any thereof.

Respondent - a person against whom a complaint is made or an order of investigation or an order to show cause is directed.

Secretary - that person appointed by the Commission to receive all filings and to execute all documents on behalf of the Commission.

Settlement - except as to full settlements presented under §130.11, proceedings in which parties have fully agreed to each other's positions and recommendations are not required to be considered settlements and may be expeditiously processed. (39 DCR 5129)

Staff - for purposes of matters before the Commission, the employees of the Commission, excluding those appointed to the Office of General Counsel and those assigned as personal assistants to the Commissioners.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2985 (July 3, 1981); as amended by Final Rulemaking published at 39 DCR 5117, 5129 (July 10, 1992).

